

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
Cities Association of Santa Clara County
AND
XXXXXX
FOR
XXXXXXX SERVICES FOR XXXXXX**

THIS AGREEMENT is made and entered into the _____ day of _____, 2018, by and between the Cities Association of Santa Clara County, an association, hereinafter referred to as “**ASSOCIATION**,” and XXXXXXXX, a xxx, hereinafter referred to as “**CONSULTANT**.”

RECITALS

WHEREAS, ASSOCIATION has solicited proposals from individuals or firms familiar with aviation, aircraft, and airport noise management issues to provide facilitator/CONSULTANT services for the Santa Clara/Santa Cruz Counties Community Roundtable; and

WHEREAS, ASSOCIATION has determined that CONSULTANT possesses the skills, experience and certifications required to provide the services required by the ASSOCIATION; and

WHEREAS, CONSULTANT is an independent CONSULTANT providing similar professional services to numerous other cities; and

WHEREAS, ASSOCIATION desires to retain CONSULTANT to provide professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises identified herein, the parties mutually agree as follow:

1. SCOPE OF SERVICES.

CONSULTANT shall assist the ASSOCIATION by performing the scope of services set forth in Exhibit A in a satisfactory and proper manner in accordance with requirements provided by the Executive Director, or designee. _____ will serve as the lead CONSULTANT and primary contact for this service. _____’s support staff will also be engaged in the successful completion of this agreement. CONSULTANT may, with prior written approval of the Executive Director, contract with others to provide certain services if needed.

CONSULTANT agrees to perform these services in accordance with the standards of its profession and within the terms of this agreement, and shall at all times provide these services on a basis satisfactory to the Executive Director, and consistent with all goals and objectives set forth herein. CONSULTANT shall be solely responsible for the quality and suitability of services provided pursuant to this Agreement. The Executive Director shall determine whether services provided by CONSULTANT pursuant to this Agreement are satisfactory to the ASSOCIATION. If

during the course of this Agreement, it is determined services being provided are not satisfactory, CONSULTANT shall take such corrective action as ASSOCIATION may require. Failure to promptly take such action shall constitute a material breach of this Agreement and cause for termination in the ASSOCIATION'S discretion. This standard of care is not intended and shall not be construed to impose an obligation on the ASSOCIATION within the meaning of Government Code Section 815.6.

The parties may amend the scope of services by mutual written consent at any time.

2. SCHEDULE. Services of CONSULTANT are to commence upon the execution of this Agreement and shall continue in full force and effect until final acceptance of all services described in Exhibit A by the Executive Director, or designee, unless otherwise terminated in accordance with the provisions of this Agreement. CONSULTANT shall meet the completion date as indicated on Exhibit A.

3. TERM. This Agreement shall continue in full force and effect until December 31, 2019. It may be extended for additional one-year terms by mutual agreement provided ASSOCIATION has adequately budgeted for such expenditure.

4. COMPENSATION. CONSULTANT's total compensation, including but not limited to all reimbursed expenses and all on-site visits, for the services set forth for the Agreement shall not exceed \$_____ as outlined in Exhibit B. In no event shall CONSULTANT be entitled to compensation for extra work unless an approved change order, or other authorization describing the extra work and payment terms, has been executed by ASSOCIATION prior to the commencement of the work.

5. METHOD OF PAYMENT. CONSULTANT will perform the work outlined in the Scope of Services, Exhibit A, and will invoice ASSOCIATION on a monthly basis until completion of the project. The monthly invoice shall clearly sets forth the designated items of work for which the billing is submitted. Each invoice shall also include a detailed record of the month's actual reimbursable expenditures.

ASSOCIATION shall review CONSULTANT's monthly statement and pay CONSULTANT for services rendered hereunder at the rates set forth in Exhibit B on a monthly basis in accordance with the approved monthly statements. Payment will be made according to the ASSOCIATION's standard Payment Schedule and Terms.

6. OWNERSHIP OF WORK. All documents furnished to CONSULTANT by ASSOCIATION and all reports and supportive data prepared by CONSULTANT by this Agreement are ASSOCIATION's property, for the exclusive use of the ASSOCIATION, and shall be given to ASSOCIATION at the completion of CONSULTANT services or upon request of ASSOCIATION.

7. COMPLIANCE WITH LAW. CONSULTANT shall comply with all applicable federal, state and local laws, codes, ordinances and regulations, including Cal/OSHA requirements. CONSULTANT represents to ASSOCIATION that it has, and will maintain through the term of the

Agreement, all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for CONSULTANT to practice its profession. CONSULTANT shall maintain a XXXX License.

8. STANDARD OF CARE. CONSULTANT's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. INSURANCE. CONSULTANT shall procure and maintain for the duration of the Agreement, insurance as described in Exhibit C against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, its agents, representatives, employees or subcontractors.

10. RELATIONSHIP BETWEEN THE PARTIES. CONSULTANT is, and at all times shall remain, an independent contractor, not an agent or employee of the ASSOCIATION. CONSULTANT shall be solely responsible for all acts of its employees, agents or sub-CONSULTANTS, including any negligent acts or omissions. CONSULTANT shall have no authority to act on behalf of the ASSOCIATION or to bind the ASSOCIATION to any obligation whatsoever, unless the ASSOCIATION provides prior written authorization to CONSULTANT. As an independent contractor, CONSULTANT shall not be entitled to any benefit, right or compensation from the ASSOCIATION other than those provided for in this Agreement.

11. INDEMNIFICATION. To the fullest extent permitted by law, CONSULTANT shall defend (with counsel reasonably approved by ASSOCIATION), indemnify and hold ASSOCIATION, the **ASSOCIATION** members of the Board of Directors, roundtable members, its employees, representatives, agents and volunteers harmless from any and all suits, damages, costs, fees, claims, demands, causes of action, liabilities, losses expenses, damage or injury of any kind, in law or equity, to property or persons, including wrongful death and financial losses (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of CONSULTANT or CONSULTANT'S officers, assistants, subcontractors, employees or agents in connection with the performance of CONSULTANT's services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

Notwithstanding the foregoing, to the extent CONSULTANT's services are subject to Civil Code Section 2782.8, (Design Professionals) the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by ASSOCIATION, the ASSOCIATION Board Members, members of the Roundtable, its employees, or authorized volunteers.

12. CALIFORNIA LABOR CODE REQUIREMENTS. CONSULTANT is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of

prevailing wage rates and the performance of other requirements on certain “public works” or “maintenance” projects. If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, CONSULTANT agrees to fully comply with such Prevailing Wage Laws, if applicable. CONSULTANT shall defend, indemnify and hold the ASSOCIATION, its members, the roundtable, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the CONSULTANT and all sub-COs to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1).

If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, CONSULTANT and all sub-consultants performing such services must be registered with the Department of Industrial Relations. CONSULTANT shall maintain registration for the duration of the Project and require the same of any sub-consultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be CONSULTANT’s sole responsibility to comply with all applicable registration and labor compliance requirements.

13. TERMINATION OF AGREEMENT. Notwithstanding any other provision of this Agreement, the ASSOCIATION may terminate this Agreement with or without cause at any time upon giving two days written notice to CONSULTANT. In the event of such a termination, CONSULTANT shall be entitled to any compensation owed for services rendered up to the effective date of termination and deemed acceptable by the Executive Director. In the event of termination, CONSULTANT shall promptly deliver to ASSOCIATION any and all finished and unfinished reports or other written, recorded, photographic or visual materials, documents, data and other deliverables.

14. MAINTENANCE OF RECORDS. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by CONSULTANT and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under this Agreement for inspection by ASSOCIATION.

15. ORGANIZATION. CONSULTANT shall assign _____ as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of ASSOCIATION.

16. WRITTEN NOTIFICATION. Any notice, demand, request, consent, approval, or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other part at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Written notice shall be

deemed communicated within 48 hours from the time of mailing it mailed as provided in this section. Emailed notice shall be deemed communicated upon its sending.

ASSOCIATION: Andi Jordan, Executive Director
Cities Association of Santa Clara County
PO Box 3144
Los Altos, CA 94024
Email: andi@citiesassociation.org

CONSULTANT: XXX
Contact
Address
Address
Email: _____

17. PARTIAL INVALIDITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

18. WAIVER. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of the Agreement.

19. NO IMPLIED WAIVERS. The failure of either party at any time to require performance by the other party of any provisions hereof shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

20. ASSIGNMENT. The parties recognize that a substantial inducement to ASSOCIATION for entering into this Agreement is the professional reputation, experience and competence of CONSULTANT. CONSULTANT, therefore, shall not assign, delegate, nor transfer any rights or obligations pursuant to this Agreement, except as specified in this Agreement, without the prior written consent of ASSOCIATION. Any assignment of any right or obligation or subcontracting of any work without ASSOCIATION consent shall be void and of no effect.

21. TAXES. CONSULTANT agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. CONSULTANT agrees to indemnify and hold ASSOCIATION harmless from any liability which it may incur to the United States of America or the State of California as a consequence of CONSULTANT's failure to pay, when due, all such taxes and obligations. In the event ASSOCIATION is audited for compliance regarding withholding or other applicable taxes, CONSULTANT agrees to furnish ASSOCIATION with proof of payment of taxes on these earnings.

22. NONDISCRIMINATION. CONSULTANT shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) or the basis of

race, color, religious creed, national origin, gender, physical or mental disability, marital status, or sexual orientation.

23. DEFAULT. In the event CONSULTANT fails to provide the services set forth in this Agreement due to the fault of CONSULTANT, ASSOCIATION shall have the right to either do the work itself or hire an outside contractor to perform those services.

24. TIME OF ESSENCE. Time is of the essence for each and every provision of this Agreement.

25. ASSOCIATION'S RIGHT TO EMPLOY OTHER CONSULTANTS. ASSOCIATION reserves its right to employ other CONSULTANTS in connection with this Project or other projects.

26. VENUE. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Santa Clara, San Jose, California.

27. CONSTRUCTION. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in the manner that avoids any violation of statute, ordinance, regulation or law.

28. AMENDMENT. This Agreement constitutes the complete and exclusive statement of the Agreement to ASSOCIATION and CONSULTANT. It may be amended or extended from time-to-time by written agreement of the parties hereto.

29. INTEGRATION. This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by CONSULTANT for ASSOCIATION and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed by the party to be charged. If there is any conflict in the terms of this Agreement with the exhibits or attachments, then the provisions of this Agreement shall control.

30. EXECUTION. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the ASSOCIATION and CONSULTANT have executed this Agreement as of the date first above written.

APPROVED AS TO CONTENT:

Director/Project Manager

APPROVED AS TO FORM:

NAME
President
Cities Association of Santa Clara County

AGREED:

Andi Jordan
Executive Director
Cities Association of Santa Clara County

Date

CONSULTANT:

EXHIBIT A: SCOPE AND SCHEDULE OF SERVICES

EXHIBIT B: RATES AND COMPENSATION

EXHIBIT C

INSURANCE

CONSULTANT shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements to: **Executive Director, Cities Association of Santa Clara County, PO Box 3144, Los Altos, CA 94024**

Minimum Scope of Insurance

Coverage shall be *at least as broad as*:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, with limits no less than **\$1,000,000/ \$2,000,000 aggregate** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following:
 - a. Bodily Injury and Property Damage
 - b. Personal Injury/Advertising Injury
 - c. Premises/Operations Liability
 - d. Products/Completed Operations Liability
 - e. Aggregate Limits that Apply per Project
 - f. Explosion, Collapse and Underground (UCX) exclusion deleted
 - g. Contractual Liability with respect to this Agreement
 - h. Broad Form Property Damage
 - i. Independent CONSULTANTs Coverage

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

2. **Automobile Liability:** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation/Employer’s Liability:** CONSULTANT certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing work under this Agreement. To the extent CONSULTANT has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement CONSULTANT shall maintain insurance as

required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the CONSULTANT's profession, with limit no less than **\$1,000,000** per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the CONSULTANT. "Covered Professional Services" as designed in the policy must specifically include work performed under this Agreement.
5. **Umbrella or Excess Liability: Umbrella or Excess Insurance.** If umbrella or an excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. CONSULTANT shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the ASSOCIATION indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
6. The ASSOCIATION, its officers, officials, employees, and volunteers are to be covered as additional insureds on the umbrella or excess policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. If CONSULTANT maintains broader coverage, umbrella or excess coverage and/or higher limits than the minimums shown above, the ASSOCIATION requires and shall be entitled to the broader coverage, umbrella or excess coverage and/or the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and any other coverages shall be available to the ASSOCIATION.

Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status. The ASSOCIATION, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and the Automobile Liability policy, with endorsements under CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage, with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations.

Primary Coverage. For any claims related to this contract, the CONSULTANT's insurance coverage shall be primary insurance as respects the ASSOCIATION, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the ASSOCIATION, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

Notice of Cancellation. Each insurance policy required above shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the ASSOCIATION.

Waiver of Subrogation. CONSULTANT hereby grants to ASSOCIATION a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the ASSOCIATION by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the ASSOCIATION has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the ASSOCIATION. The ASSOCIATION may require the CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the ASSOCIATION.

Claims Made Policies. If any of the required policies provide claims-made coverage:

7. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
8. Insurance must be maintained, and evidence of insurance must be provided ***for at least three (3) years after completion of the contract work.***
9. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of ***three (3) years*** after completion of contract work.

Verification of Coverage. CONSULTANT shall furnish the ASSOCIATION with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the ASSOCIATION before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The ASSOCIATION reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances. ASSOCIATION reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.